

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: November 21, 1997

TO : Paul Eggert, Regional Director
Region 19

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Matanuska Electric Association
Case 19-CA-25303

177-2401-6700
512-0117-0100
512-0125-1600
512-5098
524-0117
524-8301

This case was submitted for advice on whether Matanuska Electric Association, an electrical cooperative, violated Section 8(a)(1) and (3) by adopting a rule which prohibits members of the Union from serving on the cooperative's Board of Directors.

FACTS

Matanuska Electric Association, Inc. (MEA) is a non-profit electrical cooperative governed by the Alaska Electric and Telephone Cooperative Act and operating in Alaska's Matanuska Valley. Under state law, the business of an electrical cooperative must be managed by a board of not fewer than five directors elected by the cooperative's membership. The statute provides that all persons who receive electrical service within a stated geographic area are eligible for membership in the cooperative and, except as limited in the bylaws, may serve on the cooperative's Board of Directors. MEA's Board of Directors is comprised of seven members who are elected for terms of three years on a rotating basis by the membership. Board members do not receive a salary, but are paid twenty dollars for attendance at each meeting of the Board.

Local 1547 of the International Brotherhood of Electrical Workers (the Union) has three collective-bargaining agreements covering MEA employees. At all relevant times, MEA's bylaws have prohibited MEA employees from serving on the Board of Directors. The Union has never objected to that prohibition. The Union also has 58 collective-bargaining agreements with over 200 different employers throughout Alaska.

In the spring of 1997, MEA amended its bylaws to prohibit any person from becoming or remaining a Board member of MEA who

is a member, officer, director, or employee of any union local currently acting as a bargaining agent for any group of [MEA] employees, or lives in the same household with and is financially interdependent with any person included within [this section].

Doug Mills is employed at Matanuska Telephone Association, Inc. as a journeyman cable splicer. He has been a member of the Union for 26 years. He has also served on MEA's Board of Directors since 1995. In response to the new bylaw prohibiting Union members from serving on MEA's Board of Directors, Mills resigned his membership from the Union in May in order to continue in his capacity as a member of the MEA Board.

MEA asserts that the rule is intended to prevent the appearance of a conflict of interest that might be created if a Board member who is also a Union member had to vote on a contract between MEA and the Union. The Union contends that the rule is intended to discriminate against Union members and their spouses or other people with whom they are financially interdependent.

ACTION

We conclude that complaint should issue, absent settlement, alleging that MEA violated Section 8(a)(1) when it amended its bylaws to exclude Union members from its Board of Directors. The Region should dismiss, absent withdrawal, the 8(a)(3) allegation of this charge.

Initially, we note that on its face the MEA bylaw discourages membership in the Union. According to the amended bylaw, any MEA ratepayer who wishes to serve on the Board of Directors who is also represented by the Union or financially interdependent with an individual represented by the Union would have to choose between the right to serve on the Board and continued Union membership. The experience of Doug Mills provides a clear example of the effect of this bylaw: he was both a member of the Board of Directors and a longstanding member of the Union. In order to continue to serve as a MEA director, he had to resign his membership in the Union and assume financial core status. Clearly, the

new MEA bylaw interfered with his Section 7 right to belong to the Union.

While Mills, and others like him, are not employees of MEA, they are entitled to the protection of the Act. In this regard, it is well-established that the Act's definition of "employee" should be understood "in the broad generic sense," and includes "members of the working class generally."¹ Similarly, the Board has found that unlawful interference may be found even where the affected employees are not employees of the employer causing the interference.² Moreover, the Board has stated that "the specific language of the Act clearly manifests a legislative purpose to extend the statutory protection of Section 8(a)(1) beyond the immediate employer-employee relationship."³ Thus, applying the Board's broad construction of the definitions of employer and employee to the discouraging effect of the MEA bylaw on protected activity, we conclude that MEA violated Section 8(a)(1) when it recently amended its bylaws to exclude Union members from its Board of Directors.

¹ Briggs Manufacturing Co., 75 NLRB at 570, n. 3 (1947). See also, e.g., Phelps Dodge Corp. v. NLRB, 313 U.S. 177, 182-187, 192 (1941); Allied Chemical & Alkali Workers Local 10 v. Pittsburgh Plate Glass, 404 U.S. 157, 168 (1971) ("members of the active work force . . . [can] be identified as 'employees'"); John Hancock Mutual Life Insurance Co. v. NLRB, 191 F.2d 483, 485 (D.C. Cir. 1951) (Section 2(3) "includes not only the existing employees of an employer but also, in a generic sense, members of the working class"); Wood, Wire and Metal Lathers' International Union, Local No. 238, 156 NLRB 997, 998 (1966) ("[t]he mere existence of his membership in a labor organization underscores his intention to be a participating member of the general work force, entitled to the rights assured by Section 7").

² A.M. Steigerwald Co., 236 NLRB 1512, 1515 (1978), citing Fabric Services, Inc., 190 NLRB 540 (1971). Compare Operating Engineers Local 487 Health Fund, 308 NLRB 805 (1992) (fund did not violate Section 8(a)(3) and (1) when it terminated benefits for employees of employers who had withdrawn recognition from union because fund was not a Section 2(2) employer).

³ Fabric Services, Inc., 190 NLRB at 541-542.

In reaching this conclusion, we rely on Steigerwald, supra. In that case, a credit union bylaw restricted eligibility for membership to employees of nonunion employers. The credit union, but not the employer, was found to have violated Section 8(a)(1) by maintaining this restriction. The credit union and the employer were both found to have violated Section 8(a)(1) by sending letters to employees threatening them with loss of eligibility for the credit union should they vote for union representation. Thus, consistent with the theory of violation set forth in Steigerwald, MEA violated Section 8(a)(1) by maintaining bylaws which have the effect of excluding from eligibility from the Board of Directors employees who are members of the Union.

We recognize the distinction between this novel case and the others cited above where the Board has found a violation even in the absence of a direct employer-employee relationship. In all those cases, unlike this one, even though the respondents were not the employers of the employees involved, the unlawful interference involved some aspect of the employees' employment situation.

For instance, in Fabric Services, supra, employee Smoak was an installer/repairman employed by Southern Bell. He was dispatched by Southern Bell to Fabric Services' plant to perform work on telephone equipment located there. When Smoak arrived at the plant wearing a union pocket protector, he was told by Fabric Services' personnel manager that he could not work at the plant while wearing union insignia. Unwilling to remove the pocket protector, he returned to Southern Bell, where he was told to remove his pocket protector and return to his assignment at Fabric Services. The Board upheld the ALJ's conclusion that Fabric Services was liable for interfering with Smoak's protected right to wear union insignia. In this regard, ALJ Leff noted that,

Fabric Services, by virtue of its ownership of the property and its power to evict Smoak from its premises, was in a position of sufficient control effectively to enforce its direction to Smoak, in substance, either to remove his union pocket protector or get off its property and *cease performing the work his Employer had assigned him.*⁴

⁴ 190 NLRB at 542 (emphasis added).

Thus, although Fabric Services was not Smoak's employer, Fabric Services was in a position to force Smoak to choose between the exercise of his Section 7 right or his ability to carry out his employment duties.

In Steigerwald, discussed above, the effect of the credit union's interference on the employees' ability to carry out their employment duties is not as blatant as that present in Fabric Services. However, the credit union's conduct had at least some connection to the employment relationship because the employees who belonged to the credit union were entitled to their membership by virtue of their employment with Steigerwald.

In contrast to Steigerwald, in the instant case there is no direct connection between an employee's employment by another employer and his/her right to serve on the Board of Directors of MEA. An individual is entitled to serve on the Board if he or she is a MEA ratepayer and is elected to the Board, and not by virtue of his or her status as an employee. And, unlike Fabric Services, although MEA's bylaw requires a ratepayer who belongs to the Union but wants to serve on the MEA Board of Directors to choose between the two, that choice does not implicate the ratepayer/employee's ability to perform his or her employment duties.

Although MEA's new bylaw has no direct connection to an employee's employment elsewhere, the bylaw does have an indirect impact upon an employee's employment situation. In this regard, an employee who gives up his or her membership in the Union in order to serve on MEA's Board of Directors also forfeits the right to serve on Union committees and have a voice in the negotiation of terms and conditions of employment.

Accordingly, the Region should issue a Section 8(a)(1) complaint, absent settlement, consistent with the above analysis.

In agreement with the Region, we do not find merit to the 8(a)(3) allegation of this charge. A necessary element to any 8(a)(3) violation is discrimination "in regard to hire or tenure of employment or any term or condition of employment." In this case, as shown above, MEA's bylaw has no effect on any employee's terms and conditions of employment. Although one may not simultaneously maintain membership in the Union and serve on the Board of Directors, we do not view service on the Board as an employment

opportunity. Board members are elected by the MEA ratepayers; they are not hired by MEA. While each Board member receives twenty dollars for attendance at each meeting, that nominal fee does not constitute wages or a salary for work performed as an employee. Therefore, we recommend dismissal of the Section 8(a)(3) allegation of this charge, absent withdrawal.

B.J.K.